

FILED
DEC 12 2006

Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

UNITED STATES OF AMERICA,

CR 05-30060 (01)

Plaintiff,

-VS-

JACOB GRANT WEST,

Defendant.

ORDER AND OPINION

The defendant was sentenced in open court on Monday, December 11. The presentence report showed, with a criminal history category of I, a total offense level of 20 with a sentence range of 33-41 months. The defendant filed many objections to the presentence report. The government did not present evidence as to the enhancement (four levels) for use of a dangerous weapon, a bat, in the course of the hearing. Thus, the court should have sustained the objection to the four level enhancement and failed to do so on the record. This was clear error on the part of the court. The objection should be sustained, thus reducing the total offense level to 16 and the sentence range to 21-27 months.

The court announced at the sentence hearing that a variance would be ordered pursuant to 18 U.S.C. §3553 and detailed on the record the reasons for the variance. The sentence imposed of 19 months of custody will not be changed but the variance is obviously much less. Taking into account that the defendant would likely serve 21 months (less 54 days of good time credit), the variance (i.e. the difference between a Guideline sentence and the sentence imposed) is only six days.

Now, therefore,

IT IS ORDERED, as follows:

1) The objection of the defendant to the four level enhancement for the use of a dangerous weapon is sustained.

- 2) The total offense level is thus 16.
- 3) The guideline range is thus 21-27 months.
- 4) The sentence remains at 19 months and all other conditions of supervised release and all other provisions of the sentence orally imposed are the same.
- 5) The findings of the court and the correction of the sentence for clear error are made pursuant to Fed.R.Crim.P. 35(a).

Dated this 12th day of December, 2006.

BY THE COURT:


CHARLES B. KORNMANN
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: 

DEPUTY

(SEAL)